

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:07CR194
	§	
DENNIS WAYNE BAECHT	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 28, 2013, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Mandy Griffith.

On April 24, 2008, Defendant was sentenced by the Honorable Marcia A. Crone, United States District Judge, to a sentence of 57 months imprisonment followed by a three-year term of supervised release for the offense of felon in possession of a firearm. Defendant began his term of supervision on August 30, 2011.

On January 31, 2013, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 30). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall refrain from any

unlawful use of a controlled substance. Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court; (4) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On October 1, 2012, Defendant committed the misdemeanor offenses of possession of drug paraphernalia, driving while license invalid, and no insurance; (2) The charge of possession of drug paraphernalia was filed in the Justice of the Peace Court, Precinct 4, Parker County, Texas, under Case Number CR4-12-18238. On October 3, 2012, Defendant was ordered to pay a \$500 fine. As of January 31, 2013, the driving while license invalid and no insurance charges have not been filed and are still pending; (3) Defendant submitted urine specimens on January 4, 2012, December 4, 2012, and January 14, 2013, that tested positive for methamphetamine; and (4) Defendant failed to report to Pillar Mental Health Systems, Plano, Texas, for random drug testing on January 7 and 25, 2013, as instructed.

At the hearing, Defendant entered a plea of not true to the alleged violations. Jesus Perez testified as to Defendant's violations of conditions of supervised release and stated that Defendant admitted the violations to him. Defendant also testified and conceded that he tested positive to certain drug tests.

Having considered the totality of the evidence and testimony presented, the Court finds that Defendant has violated the terms of his supervised release, except the Court finds that Defendant did not fail to participate in a drug program. Nonetheless, the Court finds that given Defendant's concessions and positive drug tests, his supervised release should be revoked.

Defendant did not waive his right to allocute before the district judge or his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the February 28, 2013 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eighteen (18) months, with eighteen (18) months supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Seagoville, Texas, if appropriate.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 20th day of March, 2013.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE